

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA
and NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PRO-
TECTION; ACTING ADMINIS-
TRATOR, NEW JERSEY SPILL
COMPENSATION FUND;
and COMMISSIONER, NEW
JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTEC-
TION as TRUSTEE for NATURAL
RESOURCES,

Plaintiffs,

v.

PRINCETON GAMMA-TECH,
INC., et al.

Defendants.

CIVIL ACTION NO. 91-809 (AET)

RECEIVED

SEP 29 2004

AT 8:30

WILLIAM T. WALSH
CLERK

PARTIAL CONSENT DECREE
WITH DEFENDANT PRINCETON GAMMA-TECH, INC.

240659



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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), in 1991 filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607. In March 1999, the United States filed an amended complaint.

B. The United States in its complaint and amended complaint seeks: (1) reimbursement of response costs incurred by EPA and the Department of Justice for response actions at the Montgomery Township Housing Development Superfund Site and the Rocky Hill Municipal Wellfield Superfund Site (the "Sites"), in Somerset County, New Jersey, together with accrued interest; and (2) a declaration of Settling Defendants' liability for future response costs.

C. In April 2000, the State of New Jersey (the "State") filed a complaint in intervention in this Court against the defendants alleging that the defendants are liable to the State pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to - 23.14, for reimbursement of the costs the State has incurred, and will incur, to remediate the Sites and damages for any natural resource of this State that has been, or may be, damaged or destroyed by the contamination at the Sites.

D. On June 7, 2002, the Court issued a Memorandum and Order in response to motions for summary judgment filed by the United States and the State of New Jersey.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), in November 1997, EPA notified the United States Department of the Interior and the National Oceanic and Atmospheric Administration of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Sites on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, in September 1983.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Sites, the New Jersey Department of Environmental Protection ("NJDEP") conducted a Remedial Investigation and Feasibility Study ("RI/FS") for the Sites pursuant to 40 C.F.R. § 300.430 from November 1985 until April 1988.

H. On September 29, 1987, EPA issued the first Record of Decision ("ROD I") related to the Montgomery Township Housing Development Superfund Site (the "MTHD Site"), on which the State has given its concurrence. ROD I provided that the first operable unit of the remedy should be installation of an alternate water supply for the residents of the Montgomery Township Housing Development. By September 1990, the alternate water supply had been installed and 74 of the 80 residences within the Montgomery Township Housing Development had been connected to the alternate water supply.

I. On June 30, 1988, EPA issued another Record of Decision for each Site ("ROD II") that documents EPA's selection of a remedial action for the Sites, on which the State has

given its concurrence. Although a separate ROD was issued for each Site, the RODs selected one pump and treat system to treat the contaminant plume underlying both Sites. EPA is currently conducting the remedial design for the remedy selected in ROD II, and EPA will implement the Remedial Action.

J. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest. NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and the State and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA and in the Spill Act or in regulations promulgated under the Spill Act shall have the meaning assigned to them in CERCLA or in such regulations and in the Spill Act or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Certification of Completion of Remedial Action” shall mean EPA’s certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that the Remedial Action has been completed at the Sites in accordance with the requirements of the National Contingency Plan and the RODs.

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XV).

“Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“DOI” shall mean the United States Department of Interior and any successor departments, agencies or instrumentalities of the United States.

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Federal Natural Resource Damages” shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Sites under the trusteeship of DOI or NOAA, including the reasonable costs of assessing such injury, destruction, or loss.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States will incur for response actions at the Sites after the date of entry of this Consent Decree.

“Insurance Carriers” shall mean the following insurance carriers of Settling Defendant: Safety Mutual Insurance Company, Western World Insurance Company, Federal Insurance Company, North River Insurance Company, First State Insurance Company, Hartford Insurance Group, Hartford Fire Insurance Company, Hartford Accident & Indemnity, Penn America Insurance Company.

“Interest,” when used in reference to payments to be made to the United States shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance

Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. “Interest” for purposes of the State shall mean interest at the rate established by R. 4:42 of the then current edition of the New Jersey Court Rules.

“ISRA” shall mean the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 to -33.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

“NJDEP” shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

“NOAA” shall mean the National Oceanic and Atmospheric Administration, and any successor departments or agencies of the United States.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, the NJDEP, and the Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has incurred for response actions at the Sites prior to the date of entry of the Consent Decree.

“PGT Property” shall mean the real property located at Washington Road, 1026 Route 518, at Lots 13 and 14, Block 29001, in Montgomery Township, Somerset County, New Jersey.

“Plaintiffs” shall mean the United States and the State of New Jersey.

“Remedial Action” shall mean the response actions at the Sites set forth in the Record of Decision issued on September 29, 1987 relating to the Montgomery Township Housing Development Site (“ROD I”) and the Records of Decision issued on June 30, 1988 relating to the Montgomery Township Housing Development Site and the Rocky Hill Municipal Wellfield Site (“ROD II”).

“Sanitary Landfill Fund” shall mean the Sanitary Landfill Facility Contingency Fund established pursuant to N.J.S.A. 13:1E-105.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendant” shall mean Princeton Gamma-Tech, Inc.

“Settling Related Parties” shall mean Outokumpu (USA), Inc.; Outokumpu Copper (USA), Inc.; Outokumpu Copper, Inc.; Outokumpu, Oy; Outokumpu Copper Products, Oy; and American Nuclear Systems.

“Sites” shall mean the Montgomery Township Housing Development Superfund Site and the Rocky Hill Municipal Wellfield Superfund Site, located in Somerset County, New Jersey, in the vicinity of the intersection of U.S. Route 206 and N.J. Route 518, and generally shown on the map attached as Appendix B. The term “Sites” includes the PGT Property and all real property onto which or under which hazardous substances may have migrated from the PGT Property.

“Spill Act” shall mean the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.14.

“Spill Fund” shall mean the New Jersey Spill Compensation Fund established pursuant to N.J.S.A. 58:10-23.11i.

“State” shall mean the State of New Jersey.

“State Future Cleanup and Removal Costs” shall mean all costs, including direct and indirect costs, that the NJDEP has incurred, or will incur, after the date of entry of this Consent Decree, to remediate the Sites.

“State Natural Resource Damages” shall mean the damages for any natural resource of the State of New Jersey that has been, or may be, damaged or destroyed by the contamination at the Sites. These damages include the costs NJDEP has incurred, and will incur, to assess the damage to, or destruction of, any natural resource, and the costs NJDEP has incurred, and will incur, to restore or replace, or oversee the restoration or replacement of, any natural resource.

“State Past Cleanup and Removal Costs” shall mean all costs, including direct and indirect costs, NJDEP incurred on or before the date of entry of this Consent Decree to remediate the Sites.

“United States” shall mean the United States of America including its departments, agencies and instrumentalities.

V. Reimbursement of Response Costs

4. Settling Defendant shall pay to the United States \$14,204,000 in reimbursement of Past and Future Response Costs. Settling Defendant shall pay \$7,296,000 in reimbursement of State Past Cleanup and Removal Costs, State Future Cleanup and Removal Costs and State Natural Resource Damages. Settling Defendant is obtaining the proceeds for this settlement from settlements with its Insurance Carriers. Within 3 days of the date of all parties' signature of this Consent Decree, Settling Defendant shall place into a Court Registry Account all monies received from insurance settlements or buy backs related to claims against the carriers and arising out of the government's claims against Settling Defendant for environmental responses at the Sites. With respect to the remaining amount due under this Decree, Settling Defendant shall place any amounts received from its Insurance Carriers into the Court Registry Account within 3 days of Settling Defendant's receipt of the funds from its Insurance Carriers, but no later than 45 days after all parties' signature of this Consent Decree. However, if PGT does not receive payment from one or more Insurance Carrier due to the bankruptcy, receivership, or insolvency of such Insurance Carrier, and is unable to make payment of the complete settlement amount into the Court Registry Account for this reason, PGT will be considered to be in compliance with its obligations under this Consent Decree, provided that, upon request by the United States or the State of New Jersey, PGT agrees to assign all of its rights under its settlement agreement with the defaulting insurance carrier to the United States and the State of New Jersey.

5. a. Payments of Response Costs to the United States.

i. Within five days of receiving notice of entry of this Consent Decree, Settling Defendant shall file with the District Court a Proposed Order in the form

attached as Appendix A, that directs the Clerk of the Court to cause the principal amount of \$14,204,000 paid into the Court Registry account, or 67% of the principal amount if the principal is less than \$21,500,000, plus all interest accrued on this amount, to be disbursed from the Court Registry Account to the United States in the manner described in the Proposed Order. In the event this Consent Decree is not entered, Settling Defendant may apply to the Court for the return of the proceeds in the account, including interest, and the United States will not oppose the return of the proceeds from the Court Registry Account to the Settling Defendant.

ii. Of the total settlement amount to be paid to the United States by Settling Defendant pursuant to this Consent Decree, 50% shall be deposited in the Montgomery Township Housing Development Superfund Site Special Account and 50% shall be deposited in the Rocky Hill Municipal Wellfield Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Sites, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. Payment of Cleanup and Removal Costs to the State of New Jersey.

Within five days of receiving notice of entry of this Consent Decree, Settling Defendant shall file with the District Court a Proposed Order in the form attached as Appendix A, that directs the Clerk of the Court to cause the principal amount of \$7,296,000 paid into the Court Registry account, or 33% of the principal amount if the principal is less than \$21,500,000, plus all interest accrued on this amount, to be disbursed from the Court Registry Account to the State in the manner described in the Proposed Order. In the event this Consent Decree is not entered, Settling Defendant may apply to the Court for the return of the proceeds in the account,

including interest, and the State will not oppose the return of the proceeds from the Court Registry Account to the Settling Defendant.

VI. ACCESS/INSTITUTIONAL CONTROLS

6. With respect to the PGT Property, or any other property owned or controlled by the Settling Defendant where access and/or land/water use restrictions are needed to implement response activities at the Sites, Settling Defendant shall:

a. Commencing upon the date of Settling Defendant's signature on this Consent Decree, provide the United States and its representatives, including EPA and its contractors, the State of New Jersey and its representatives, including the NJDEP and its contractors, and any persons or entities authorized by the United States or the State of New Jersey, access at all times to the Sites and any property owned or controlled by Settling Defendant to which access is determined by EPA or the NJDEP to be required for the implementation of this Consent Decree, or for the purpose of conducting any response activity related to the Sites, including but not limited to:

i. Monitoring, investigation, removal, remedial or other activities at the Sites;

ii. Activities related to the design, implementation, construction and performance of remediation of the groundwater, including but not limited to, installation of monitoring and/or extraction wells, trenches, piping, and/or sewer connections on the Sites;

iii. Placement, replacement, modification, operation and maintenance of a groundwater extraction, treatment and discharge system to treat contaminated groundwater and which will remain at the Sites or property owned or controlled by Settling Defendants until such time as the EPA and the NJDEP have determined that the groundwater remediation is complete;

iv. Conducting groundwater monitoring well sampling and maintenance;

v. Verifying any data or information obtained by or submitted to the United States or the NJDEP;

vi. Conducting investigations and response activities relating to contamination at or near the Sites;

vii. Obtaining samples;

viii. Assessing the need for or planning and implementing additional response actions at or near the Sites;

ix. Assessing Settling Defendants' compliance with the provisions of this Consent Decree;

x. Determining whether the Sites or other property are being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

xi. Conducting a soil investigation and soil cleanup on the PGT Property that shall include, but not be limited to, an investigation of the active septic system and leach field and the inactive septic system and leach field on the PGT Property; and

xii. The restoration or replacement, or oversight of the restoration or replacement of, any natural resource of this State damaged or destroyed by the contamination at the Sites.

b. Commencing upon the date of Settling Defendant's signature on this Consent Decree, refrain from using the Sites, or such other property in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented at the Sites. Such restrictions include but are not limited to restrictions on the use of groundwater at the Sites or disturbances to the surface or subsurface at the Sites that would interfere with the performance of the remedial measures to be implemented, or be detrimental to public health or the environment. Settling Defendant shall notify EPA and the NJDEP (pursuant to Section XIII), and receive approval from EPA (in consultation with the NJDEP) before Settling Defendant or its successors and assigns conduct any operation that could adversely affect the integrity or protectiveness of any containment system, extraction system, treatment system, monitoring system, or other remedial measures implemented at the Sites.

c. continue to comply with the Access Agreement entered into with EPA and executed by Settling Defendant on August 8, 2003. This Access Agreement is attached as Appendix D and is hereby incorporated into, and is enforceable as part of this Consent Decree.

d. Upon request by EPA, execute and record in the Somerset County Clerk's Office, State of New Jersey, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any remedial measure at the Sites including, but not limited to, those activities listed in sub-Paragraph 6.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in sub-Paragraph 6.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Settling Defendant shall grant the access rights and the rights to enforce the land/water use restrictions to the United States, on behalf of EPA, and its representatives, and the NJDEP and its representatives. Settling Defendant shall, within forty-five (45) days of EPA's request, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix C, that is enforceable under the laws of the State of New Jersey, free and clear of all prior liens and encumbrances (except as approved by EPA and the NJDEP), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within fifteen (15) days of receipt of EPA's written approval and acceptance of the easement, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the

easement with the Somerset County Clerk's Office, State of New Jersey. Within thirty (30) days of recording the easement, Settling Defendant shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

e. as part of any contract for sale of the PGT Property, require the purchaser to comply with the access requirements of this Consent Decree.

7. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, the Spill Act and any other applicable statute or regulations.

8. From the effective date of this Consent Decree, the access provided for herein shall govern any and all access and occupancy of the Sites including the PGT Property. Any and all prior verbal or written agreements or correspondence made by EPA or the NJDEP pertaining to access or occupancy of the Sites are superseded by this Consent Decree.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

9. Interest on Late Payment. In the event that any payments required by Section VII, Paragraph 10 (Stipulated Penalty) are not received when due, Interest shall accrue on the unpaid balance from the date such payments were due through the date of payment.

10. a. Stipulated Penalty. If Settling Defendant fails to make any of the payments to the Court Registry when due, or fails to file the Proposed Order when required to do

so by Paragraphs 4.a. and 5.a., or Settling Defendant fails to comply with the obligations set forth in Section VI (Access and Institutional Controls), Settling Defendant shall be in violation of this Consent Decree and shall pay to EPA and the NJDEP as a stipulated penalty, in addition to the Interest due pursuant to Paragraphs 4.a., 5.a., and 9, the following amounts per violation per day:

Penalty to United States Per Violation Per Day

\$1,000

\$2,000

Period of
Noncompliance

1st through 7th days

8th day and beyond

Penalty to State Per Violation Per Day

\$1,000

\$2,000

Period of
Noncompliance

1st through 7th days

8th day and beyond

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA or the NJDEP. All payments to the United States under this Paragraph shall be identified as “stipulated penalties” and shall be remitted via Electronic Funds Transfer (“EFT”), along with the following information, to EPA’s Account with Mellon Bank, Pittsburgh, Pennsylvania, as follows:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: **EPA**
- iii. Account code for Mellon Bank account receiving the payment: **9108544**

- iv. Mellon Bank Routing Number: **043000261**
- v. Name of Party making payment
- vi. EPA Case Number: **02-1990-0181**
- vii. Site Spill Identifier Nos. **02-90** and **02-64**

The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site names and Site/Spill ID Numbers (Montgomery Township Housing Development Superfund Site, 02-90, and Rocky Hill Municipal Wellfield Superfund Site, 02-64), EPA Region II and EPA Case Number 02-1990-0181. At the time of each payment made pursuant to this Section, copies of check(s) submitted and any accompanying transmittal letter(s) shall be sent to the United States as provided in Section XIII (Notices and Submissions), and to Chief, Financial Management Branch, U.S. EPA Region II, 290 Broadway, 29th Floor, New York, NY 10007-1866.

All payments to the State under this Paragraph shall be identified as "stipulated penalties" and payment shall be made by a certified or cashier's check made payable to the "Treasurer, State of New Jersey." The certified or cashier's check shall be mailed or otherwise delivered to the Section Chief, Hazardous Site Litigation Section, Department of Law and Public Safety, Division of Law, Richard J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625-0093.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the NJDEP has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the day a violation occurs and shall continue to accrue through the date of

payment or the final day of correction of the noncompliance or completion of the activity.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States or the State files with the Court a motion to enforce this Consent Decree, a complaint, or any other application for payment required under this Consent Decree and (1) the United States or the State thereafter receives a payment, or (2) an order directing payment of any portion of the amount sought by the United States or the State, or (3) the action is settled in a manner in which the United States or the State receives any portion of the amount sought, the Settling Defendant shall reimburse the United States and/or the State for all costs arising from preparation of and filing of the motion, complaint or other application, including, but not limited to, costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States or the State may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFFS

14. a. As to the United States

In consideration of the payments that will be made by the Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Paragraphs 15, 16, 18, and 19 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant and Settling Related Parties pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Sites. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payment required by Paragraph 4.a. of Section V (Reimbursement of Response Costs), along with any applicable stipulated penalties accrued pursuant to Paragraph 10 of Section VII (Failure to Comply with Consent Decree). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action as defined in Paragraph 3 of this Consent Decree. Provided that the payments to the United States required pursuant to Paragraphs 4.a. and 5 are made, EPA agrees that it shall waive its right to perfect or otherwise assert the CERCLA lien that it might have against the PGT Property pursuant to Section 107(r)(2), 42 U.S.C. § 9607(r)(2) against any party that purchases the PGT Property from PGT. EPA shall file a release of Notice of Federal Lien imposed upon the PGT property pursuant to Section 107(l) of CERCLA once the payments required by Paragraphs 4 and 5.a. have been made, and/or PGT has assigned the insurance settlements in compliance with Paragraph 4. These covenants not to sue Settling Defendant and Settling Related Parties are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These

covenants not to sue extend only to Settling Defendant and Settling Related Parties and do not extend to any other person.

b. As to the State of New Jersey.

In consideration of the payment that will be made by Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Paragraphs 15, 16, and 19 of this Section, the State of New Jersey covenants not to sue or to take administrative action against Settling Defendant and Settling Related Parties relating to the Sites pursuant to Section 107(a) of CERCLA and the Spill Act, specifically N.J.S.A. 58:10-23.11g.c.(1) and -23.11u.b.(4). Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by NJDEP of the payment required by Paragraph 5.a. of Section V (Reimbursement of Response Costs), along with any applicable stipulated penalties accrued pursuant to Paragraph 10 of Section VII (Failure to Comply with Consent Decree). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action as defined in Paragraph 3 of this Consent Decree.

The covenant not to sue or to take administrative action under Section 107(a) of CERCLA and the Spill Act, specifically N.J.S.A. 58:10-23.11g.c.(1) and -23.11u.b.(4), applies to a prospective purchaser, operator or lessee of the PGT Property but is limited to contamination that exists on the PGT Property on the date of the entry of this Consent Decree and does not apply to contamination that is caused by a prospective purchaser, operator or lessee of the PGT Property, nor does the covenant not to sue or to take administrative action apply to a prospective purchaser, operator or lessee of the PGT Property who worsens or exacerbates the contamination that exists on the PGT Property on the date of the entry of this Consent Decree.

Provided the NJDEP receives the payment required by Paragraph 5.a. of Section V (Reimbursement of Response Costs), along with any applicable stipulated penalties accrued under Paragraph 10 of Section VII (Failure to Comply with Consent Decree) and except as specifically provided in Paragraphs 14. c. and 14. d. , the NJDEP also covenants not to sue or to take administrative action against PGT pursuant to ISRA, specifically N.J.S.A. 13:1K-13, for soil and groundwater contamination and the migration of groundwater contamination concerning the PGT Property only. The covenant not to sue or to take administrative action under ISRA applies only to contamination that exists on the PGT Property on the date of the entry of this Consent Decree and does not apply, with regard to a prospective purchaser, operator or lessee of the PGT Property, to contamination that is caused by a prospective purchaser, operator or lessee of the PGT Property, nor does the covenant not to sue or to take administrative action apply, as to PGT, to contamination that exists on the PGT Property on the date of the entry of this Consent Decree that is worsened or exacerbated by PGT, and does not apply to a prospective purchaser, operator or lessee of the PGT Property who worsens or exacerbates contamination that exists on the PGT Property on the date of the entry of this Consent Decree.

If PGT plans to “close operations” or “transfer ownership or operations” of the PGT Property as those terms are defined in ISRA, specifically N.J.S.A. 13:1K-8, PGT shall notify the NJDEP in writing, no more than five days subsequent to closing operations or of its public release of its decision to close operations, whichever occurs first, or within five days after the execution of an agreement to transfer ownership or operations. The written notice to the NJDEP shall: identify the PGT Property; describe the transaction; state the date of the closing of operations or the date of the public release of the decision to close operations as evidenced by a copy of the appropriate public announcement, if applicable; state the date of execution of the

agreement to transfer ownership or operations and the names, addresses and telephone numbers of the parties to the transfer; state the proposed date for closing operations or transferring ownership or operations; list the name, address and telephone number of an authorized agent for PGT; and certify that the information submitted is accurate.

These covenants not to sue Settling Defendant and Settling Related Parties are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendant and Settling Related Parties and do not extend to any other person.

c. NJDEP's ISRA Reservations.

Notwithstanding any other provision of this Consent Decree, the NJDEP reserves, and this Consent Decree is without prejudice to, the NJDEP's right to institute proceedings in this action or in a new action, or take administrative action against the Settling Defendant in Paragraph 5.a. under ISRA concerning the PGT Property, to the extent that EPA has determined that any response actions taken or required by NJDEP related to this subparagraph will not significantly delay or be inconsistent with the Remedial Action, if, prior to the issuance of NJDEP's Remedial Action Selection Report for the PGT Property:

(i). NJDEP discovers conditions at the PGT Property previously unknown to NJDEP;

or

(ii). NJDEP receives information, previously unknown to NJDEP, in whole or in part;

and

these previously unknown conditions or information, together with any other relevant information, indicate that a hazardous substance or hazardous substances not previously known to the NJDEP at the PGT Property have been discovered and require remediation in compliance with the applicable health risk or environmental standards.

d. Notwithstanding any other provision of this Consent Decree, the NJDEP reserves, and this Consent Decree is without prejudice to, the NJDEP's right to institute proceedings in this action or in a new action, or take administrative action against the Settling Defendant in Paragraph 5.a. under ISRA concerning the PGT Property, to the extent that EPA has determined that any response actions taken or required by NJDEP related to this subparagraph will not significantly delay or be inconsistent with the Remedial Action, if, after the remedy selection pursuant to ISRA in NJDEP's Remedial Action Selection Report is implemented at the PGT Property:

(i). NJDEP discovers conditions at the PGT Property, previously unknown to NJDEP;

or

(ii). NJDEP receives information, previously unknown to NJDEP, in whole or in part;

and

these previously unknown conditions or information, together with any other relevant information, indicate that the remedy selection pursuant to ISRA in NJDEP's Remedial Action Selection Report for the PGT Property is not protective of human health and safety, or the environment.

e. For the purposes of paragraph 14.c., the information and the conditions known to NJDEP shall include only the following: the information and conditions known to the NJDEP as of the date of NJDEP's comments on PGT's Report entitled "Summary of Areas of Concern and Soil Data on the Princeton Gamma-Tech Inc. Property;" PGT's Report entitled "Summary of Areas of Concern and Soil Data on the Princeton Gamma-Tech, Inc. Property;" the Draft Pre-Design Investigation Report dated May 31, 2002, the Re-Evaluation of the June 1988 Records of Decision ("Re-Evaluation") for the Sites issued by EPA on May 18, 2001; the administrative records supporting the Records of Decision and the Re-Evaluation and the appendices to the Draft Preliminary Design Report dated October 15, 1993; and PGT's 1985 Environmental Cleanup Responsibility Act submission to the NJDEP concerning the PGT Property. In addition, NJDEP acknowledges the existence of the data reported in the Expert Report prepared by Richard G. Shepherd of Conestoga-Rovers on behalf of PGT, entitled "Expert Report, Assessment of Problems with the Implementation of USEPA's Remedial Response at the Montgomery Township Housing Development and Rocky Hill Municipal Wellfield Superfund Sites, March 2000." This acknowledgment shall not be construed as an admission by NJDEP of the validity of the data in this report.

f. For the purposes of Paragraph 14.d., the information and the conditions known to NJDEP shall include only the information and conditions known to the NJDEP as of the date the Remedial Action Selection Report for the PGT Property is signed, which will be contained in the Remedial Action Selection Report and the administrative record supporting the Remedial Action Selection Report, NJDEP's comments on PGT's Report entitled "Summary of Areas of Concern and Soil Data on the Princeton Gamma-Tech Inc. Property," PGT's Report entitled "Summary of Areas of Concern and Soil Data on the Princeton Gamma-

Tech Inc. Property," the Draft Pre-Design Investigation Report dated May 31, 2002, the Re-Evaluation of the June 1988 Records of Decision ("Re-Evaluation") for the Sites issued by EPA on May 18, 2001, the administrative records supporting the Records of Decision and the Re-Evaluation, the appendices to the Draft Preliminary Design Report dated October 15, 1993, and PGT's 1985 Environmental Cleanup Responsibility Act submission to the NJDEP concerning the PGT Property. In addition, NJDEP acknowledges the existence of the data reported in the Expert Report prepared by Richard G. Shepherd of Conestoga-Rovers on behalf of PGT, entitled "Expert Report, Assessment of Problems with the Implementation of USEPA's Remedial Response at the Montgomery Township Housing Development and Rocky Hill Municipal Wellfield Superfund Sites, March 2000." This acknowledgment shall not be construed as an admission by NJDEP of the validity of the data in this report.

15. Plaintiffs' Pre-certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States and NJDEP reserve, and this Consent Decree is without prejudice to, the right under their respective legal authorities, as applicable, to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants: (a) to perform further response actions relating to the Sites; (b) to reimburse the United States or NJDEP for additional costs of response, or (c) or to reimburse the United States or NJDEP for additional State Natural Resource Damages if, prior to Certification of Completion of the Remedial Action:

- (i). conditions at the Sites, previously unknown to EPA, are
discovered, or

- (ii). information, previously unknown to EPA, is received, in whole or in part,

and EPA determines, after a reasonable opportunity for review and comment by NJDEP, that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action set forth in the RODs is not protective of human health or the environment.

16. Plaintiffs' Post-certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States and NJDEP reserve, and this Consent Decree is without prejudice to, the right under their respective legal authorities, as applicable, to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants: (a) to perform further response actions relating to the Sites, (b) to reimburse the United States or the NJDEP for additional costs of response, or (c) to reimburse the United States or NJDEP for additional State Natural Resource Damages, if, subsequent to Certification of Completion of the Remedial Action:

- (i). conditions at the Sites, previously unknown to EPA, are discovered, or
- (ii). information, previously unknown to EPA, is received, in whole or in part,

and EPA determines, after a reasonable opportunity for review and comment by NJDEP, that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

17. a. For purposes of Paragraph 15., the information and the conditions known to EPA and the State of New Jersey shall include: that information and those conditions known to EPA as of May 31, 2002, the date of the Draft Pre-Design Investigation Report, and set forth in the Re-Evaluation of the June 1988 Records of Decision ("Re-Evaluation") issued on May 18, 2001, the Records of Decision for the Sites, and the administrative records supporting the Records of Decision and the Re-Evaluation, and the appendices to the Draft Preliminary Design Report dated October 15, 1993.

b. For purposes of Paragraph 16., the information and the conditions known to EPA and the State of New Jersey shall include: that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Draft Pre-Design Investigation Report, Records of Decision, the Re-Evaluation, the administrative records supporting the Records of Decision and the Re-Evaluation, the appendices to the Draft Preliminary Design Report dated October 15, 1993, and the post-ROD administrative record.

c. In addition, EPA and the State of New Jersey acknowledge the existence of the data reported in: Expert Reports prepared by Richard G. Shepherd of Conestoga-Rovers on behalf of PGT, entitled "Expert Report, Assessment of Problems with the Implementation of USEPA's Remedial Response at the Montgomery Township Housing Development and Rocky Hill Municipal Wellfield Superfund Sites, March 2000;" "Supplemental

Expert Report, Results of Investigations of Contaminant Sources, Former Princeton Chemical Research Property, May 2000;" "Final Field Testing and Sampling Report, Final Interim Environmental Monitoring Report, Rocky Hill/Montgomery Township Design, May 1993" prepared by Camp Dresser & McKee; "Summary of Areas of Concern and Soil Data on the Princeton Gamma-Tech, Inc. Property, May 2002" prepared by Conestoga-Rovers & Associates; "Assessment of Sources and Pathways of Groundwater Contamination at the Montgomery Township Housing Development and Rocky Hill Municipal Wellfield Superfund Sites, March 2000" prepared by Richard G. Shepherd of Conestoga-Rovers & Associates.

d. PGT has requested that all of the data in the reports and materials set forth in Paragraph 17.c. be included within Paragraphs 17.a. and 17.b. EPA and the State of New Jersey have declined to do so. In an effort to avoid litigation of that dispute at the present time, EPA, the State of New Jersey, and PGT agree to the following:

(1) The acknowledgment contained within Paragraph 17.c. shall not be construed as an admission by EPA or the State of New Jersey of the validity of the data in the reports or materials identified in Paragraph 17.c.

(2) PGT's execution of this Consent Decree does not waive its ability to assert at a later date that the data contained within materials and reports identified in Paragraph 17.c. shall be utilized for determining known conditions pursuant to Paragraph 15 and 16.

(3) For purposes of Paragraph 15 and 16 regarding information and conditions known to EPA and the State of New Jersey, EPA, the State of New Jersey, and

PGT agree to defer the resolution of any current disagreement between the Parties regarding the validity of data set forth in Paragraph 17.c. and its consideration as a known condition for purposes of Paragraphs 15 and 16.

18. Reservations Concerning Federal Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States, on behalf of DOI and NOAA, reserves the right to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Federal Natural Resource Damages, based on (a) conditions with respect to the Site, unknown to DOI or NOAA as of October 1, 2003, that result in release(s) of hazardous substance(s) that contribute to injury to, destruction of, or loss of Federal Natural Resources, or (b) information received after October 1, 2003, which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to DOI or NOAA as of October 1, 2003.

19. Plaintiffs' General Reservations of Rights.

a. As to the United States.

The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the United States' Covenant Not to Sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant and against any Settling Related Parties (and any successors to any Settling Related Parties) who take title to or operate at the PGT Property with respect to:

- i. liability for failure by Settling Defendant to meet a requirement of this Consent Decree;
 - ii. liability arising from the past, present, or future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Sites;
 - iii. liability for future disposal, of a hazardous substance, pollutant, or contaminant at the Sites;
 - iv. criminal liability; and
 - v. liability for violations of federal or state law which occur during or after implementation of the Remedial Action.
- b. As to the State of New Jersey.

The NJDEP reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the NJDEP's Covenant Not to Sue. Notwithstanding any other provision of this Consent Decree, the NJDEP reserves all rights against Settling Defendant and against any Settling Related Parties (and any successors to any Settling Related Parties) who take title to or operate at the PGT Property with respect to:

- i. liability for failure by Settling Defendant to meet a requirement of this Consent Decree;

- ii. liability arising from the past, present, or future disposal, release, discharge, threat of release or unsatisfactory storage or containment of a hazardous substance, pollutant, or contaminant outside of the Sites;
- iii. liability for future disposal, discharge or unsatisfactory storage or containment of a hazardous substance, pollutant, or contaminant at the Sites;
- iv. criminal liability;
- v. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- vi. liability for any claim filed on or after the effective date of this Consent Decree against the Spill Fund or the Sanitary Landfill Fund concerning the Sites.

IX. COVENANTS BY SETTLING DEFENDANT

20. Covenant Not to Sue. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Sites or this Consent Decree including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

b. any claims against the United States or the State, including any department, agency or instrumentality of the United States or the State under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613 relating to the Sites;

c. any claims arising out of response actions at or in connection with the Sites, including any claim under the United States Constitution, the Constitution of the State of New Jersey, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law;

d. any direct or indirect claim for reimbursement from the Spill Fund or the Sanitary Landfill Fund concerning the Sites; or

e. any claims or causes of action under federal, state or local law concerning the Sites against the United States or the State, including any department, agency or instrumentality of the United States or the State.

Except as provided in Paragraph 26 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Section VIII (Covenants not to Sue by Plaintiffs), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

21. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 14.a. and 14.b., nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Sites against any person not a Party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant and Settling Related Parties are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs and Future Response Costs and State Past Cleanup and Removal Costs, State Future Cleanup and Removal Costs and State Natural Resource Damages relating to the Sites. The “matters addressed” in this Consent Decree do not include those response costs, response actions, cleanup and removal costs, or remedial actions as to which the United States and the NJDEP have reserved their rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States or the NJDEP asserts rights against Settling Defendant coming within the scope of such reservations.

24. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA, DOJ and the NJDEP in writing no later than 60 days prior to the initiation of such suit or claim.

25. Settling Defendant also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA, DOJ and the NJDEP in writing within 10 days of service of the complaint upon it. In addition, Settling Defendant shall notify EPA, DOJ and the NJDEP within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

26. In any subsequent administrative or judicial proceeding initiated by the United States or the NJDEP for injunctive relief, recovery of response or cleanup and removal costs, Federal Natural Resource Damages or other relief relating to the Sites, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that the claims raised by the United States or the NJDEP in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by Plaintiffs).

XI. ACCESS TO INFORMATION

27. Settling Defendant shall provide to EPA and the NJDEP, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession

or control or that of their contractors or agents relating to activities at the Sites, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Sites.

28. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the records submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA and the NJDEP, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendant asserts such a privilege in lieu of providing records, they shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the State shall be withheld on the grounds that they are privileged.

29. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Sites.

XII. RETENTION OF RECORDS

30. Until ten years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Sites or the liability of any person under CERCLA or the Spill Act with respect to the Sites, regardless of any corporate retention policy to the contrary.

31. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify EPA, DOJ, and the NJDEP at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, DOJ or the NJDEP, Settling Defendant shall deliver any such records or documents to EPA or the NJDEP. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States or the State shall be withheld on the grounds that they are privileged.

32. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, in response to all information requests issued by EPA pursuant to Section 104(e) of CERCLA and all discovery requests pursuant to this litigation, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA and the NJDEP, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Sites, or to the ownership, possession, generation, treatment, transportation, storage, disposal or discharge of a hazardous substance, pollutant or contaminant at or in connection with the Sites;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports or information relating to its potential liability regarding the Sites, since notification of potential liability or the filing of a suit against the Settling Defendant by the United States or the State regarding the Sites; and

c. fully complied with any and all EPA or NJDEP requests for information regarding the Sites pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) and the Spill Act.

XIII. NOTICES AND SUBMISSIONS

33. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute

complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, DOJ, the NJDEP, the State, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-290)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

ATTN: Montgomery Township/Rocky Hill Superfund Site Attorney
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel
New Jersey Superfund Branch
290 Broadway, 17th Floor
New York, New York 10007-1866

As to the NJDEP or the State:

Section Chief
Hazardous Site Litigation Section
Department of Law & Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093
609-984-4863

Assistant Director
Division of Remedial Management and Response
Department of Environmental Protection
P.O. Box 413
401 East State Street
Trenton, NJ 08625

As to Settling Defendant:

Kalevi Onnela
President
Princeton Gamma-Tech, Inc.
1026 Route 518
Princeton, New Jersey 08540

Jeffrey Cohen, Esq.
Robertson, Freilich, Bruno & Cohen
One Riverfront Plaza, 4th Floor
Newark, NJ 07102

XIV. RETENTION OF JURISDICTION

34. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XV. INTEGRATION/APPENDICES

35. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Proposed Order Regarding Disbursement of Funds from the Court Registry;

"Appendix B" is a map of the Montgomery Township Housing Development and the Rocky Hill Municipal Wellfield Superfund Sites;

“Appendix C” is the Environmental Protection Easement and Declaration of Restrictive Covenants; and

“Appendix D” is the Access Agreement executed by Settling Defendant on August 8, 2003.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

36. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States and the NJDEP reserve the right to withdraw or withhold their consent if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

37. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVII. EFFECTIVE DATE

38. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVIII. SIGNATORIES/SERVICE

39. The undersigned representative of Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, the Assistant Commissioner for Site Remediation, New Jersey Department of Environmental Protection and the Assistant Commissioner for Natural and Historic Resources, New Jersey Department of Environmental Protection certifies

that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

40. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States or the NJDEP has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

41. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

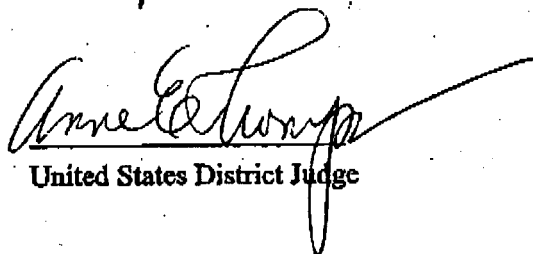
XIX. FINAL JUDGMENT

42. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

43. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the NJDEP and

the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 29th DAY OF Sept., 2003.


United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA
and NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PRO-
TECTION; ACTING ADMINIS-
TRATOR, NEW JERSEY SPILL
COMPENSATION FUND;
and COMMISSIONER, NEW
JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTEC-
TION as TRUSTEE for NATURAL
RESOURCES,

Plaintiffs,

v.

PRINCETON GAMMA-TECH,
INC., et al.

Defendants.

CIVIL ACTION NO. 91-809 (AET)

PROPOSED ORDER REGARDING DISBURSEMENT OF FUNDS
FROM THE COURT REGISTRY

Upon application of the parties, it is hereby ORDERED, ADJUDGED and DECREED:

1. Pursuant to the Order of the Court dated _____, 2003 in this action,
Defendant Princeton Gamma-Tech, Inc. paid the sum of \$21,500,000 into the Court Registry
between _____, 2003 and _____, 2003.
2. Pursuant to the _____, 2003 Order, the funds deposited by Princeton
Gamma-Tech, Inc. were to be disbursed in accordance with the terms of a proposed Consent
Decree to be lodged with this Court.

3. Pursuant to the terms of the Consent Decree, which was entered by the Court on _____, 2003, the Clerk of the Court shall disburse the funds Princeton Gamma-Tech, Inc. deposited into the Court Registry as follows:

- (i) To the United States: \$14,204,000 plus all accrued interest on this amount (without a deduction for the handling fee, as noted below). The check should bear the name and Civil Action No. of this matter, and USAO File No. _____, and should be forwarded to:

United States Attorney's Office
District of New Jersey
402 E. State Street, Room 502
Trenton, New Jersey 08608

- (ii) To the State of New Jersey: \$7,296,000, plus the interest accrued on this amount (without a deduction for the handling fee, as noted below). The check should be made payable to the "Treasurer, State of New Jersey".

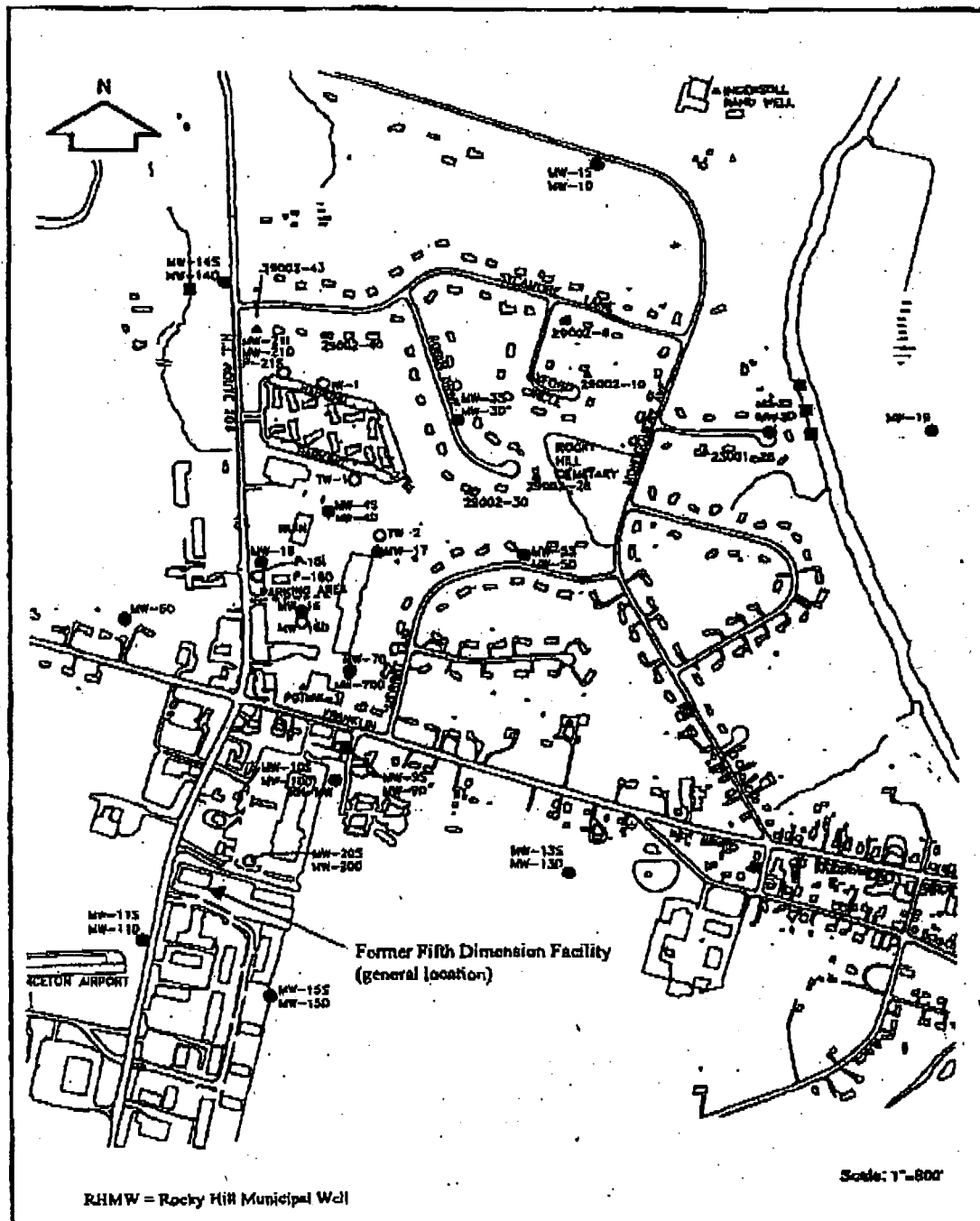
The check should be forwarded to:

Section Chief, Hazardous Site Litigation Section
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 093
Trenton, New Jersey 08625-0093

4. The miscellaneous fee for handling of the funds in the registry of the Court shall not be deducted from the payments referenced in Paragraph 3, above, because the funds are being handled on behalf of the United States, in accordance with the notes to 28 U.S.C. § 1914 and 55 Fed. Reg. 42867.

SO ORDERED this _____ day of _____ 2003

UNITED STATES DISTRICT JUDGE



CDM Federal Programs Corporation

Site Map
 Rocky Hill Municipal Well/Montgomery Township
 Housing Development Superfund Sites
 Rocky Hill, New Jersey
 Project Number 6126-006

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 19____, by and between _____, ("Grantor"), having an address of _____, and, _____ ("Grantees"), having addresses of _____.

WITNESSETH:

2. WHEREAS, Grantor is the owner of a parcel of land located in the county of _____, State of _____, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the _____ Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on _____, 19____; and

4. WHEREAS, in a Record of Decision dated _____, 19____ (the "ROD"), the EPA Region ____ Regional Administrator, with the concurrence of the New Jersey Department of Environmental Protection ("NJDEP"), selected a "remedial action" for the Site, which provides, in part, for the following actions:

and

5. WHEREAS, with the exception of _____
_____, the remedial action has been implemented at the Site; and

6. WHEREAS, the parties hereto have agreed 1) to grant a permanent right of access over the Property to the Grantees for purposes of implementing, facilitating and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

7. WHEREAS, Grantor wishes to cooperate fully with the Grantees in the implementation of all response actions at the Site;

NOW, THEREFORE:

8. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of [the terms of the Consent Decree in the case of _____ v. _____, etc.], does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantees, and its assigns, with general warranties of title, 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

9. Purpose: It is the purpose of this instrument to convey to the Grantees real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

10. Restrictions on use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

11. Modification of restrictions: The above restrictions may be modified, or terminated in whole or in part, in writing, by the Grantees. If requested by the Grantor, such writing will be executed by Grantees in recordable form.

12. Environmental Protection Easement: Grantor hereby grants to the Grantees an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Implementing the response actions in the ROD, including but not limited to _____;
- b) Verifying any data or information submitted to EPA or the NJDEP;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;

- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if the Grantees, in their sole discretion, determine[] i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

13. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

14. Nothing in this document shall limit or otherwise affect EPA's or NJDEP's rights of entry and access or EPA's or NJDEP's authority to take response actions under CERCLA, the NCP, the Spill Act or other federal and state laws.

15. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

16. Notice requirement: Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, DATED _____, 19__, RECORDED IN
THE PUBLIC LAND RECORDS ON _____, 19__, IN
BOOK _____, PAGE _____, IN FAVOR OF, AND
ENFORCEABLE BY, THE UNITED STATES OF AMERICA
AND THE NEW JERSEY DEPARTMENT OF EN-
VIRONMENTAL PROTECTION.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantees with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

17. Administrative jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA. The state agency having administrative jurisdiction over the interests acquired by the State of New Jersey by this instrument is the NJDEP.

18. Enforcement: The Grantees shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA and the Spill Act. Enforcement of the terms of this instrument shall be at the discretion of the Grantees, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantees of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantees under this instrument.

19. Damages: Grantees shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

20. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.

21. Covenants: Grantor hereby covenants to and with the United States and the NJDEP and their assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Exhibit D attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

22. Notices: Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantees:

General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policies and purposes of CERCLA and the Spill Act. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.
- e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f) Joint Obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.
- g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantees", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantees" and their personal representatives, heirs, successors, and assigns. The rights of the Grantees and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.
- h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the United States and the State of New Jersey and their assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this _____ day of _____, 19__.

By: _____

Its: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this __ day of ____, 19__, before me, the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____, known to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of _____

My Commission Expires: _____

This easement is accepted this _____ day of _____, 19____.

UNITED STATES OF AMERICA
the persons and/or entities named at the beginning of this document, identified as "Grantor" and
their personal representatives, heirs, successors, and assigns.

U.S. ENVIRONMENTAL PROTECTION
AGENCY

By: _____

New Jersey Department of Environmental
Protection

By: _____

Attachments:	Exhibit A	-	legal description of the Property
	Exhibit B	-	identification of proposed uses and construction plans, for the Property
	Exhibit C	-	identification of existing uses of the Property
	Exhibit D	-	list of permitted title encumbrances

D

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II
CONSENT FOR ACCESS TO PROPERTY

Owner: Princeton Gamma-Tech, Inc.

Property: Block 29002, Lot 49 and Block 29002, Lot 50
Montgomery Township, New Jersey

Mailing Address: CN 863 Princeton, New Jersey 08542

I, the undersigned, represent that Princeton Gamma-Tech, Inc. is the owner ("Owner") of the real property ("Property") noted above and I consent to officers, employees and authorized representatives of the United States Environmental Protection Agency ("EPA") entering and having access to this property for the following purposes:

1. Construction and long-term operation and maintenance of a groundwater pump and treat system, to be furnished and installed as a complete modular system ready for operation, and sized to fit into a standard trailer type enclosure situated upon a concrete slab and foundation on the Property. The system is to be located on the Property as designated on the attached map;
2. Construction of a temporary staging area/support zone to store construction materials, trucks/drill rig, equipment and investigation derived wastes;
3. Storage of an approximate 10' x 40' tank of investigation derived wastewater to be located on a paved portion of the parking lot on the Property as designated on the attached map. This tank will be stored on the Property until the groundwater pump and treat system is fully operational;
4. Installation, operation and maintenance of extraction wells with vaults as designated on the attached map;
5. Installation, operation and maintenance of underground piping from the extraction wells to the treatment system as designated on the attached map;
6. Installation, operation and maintenance of underground piping from the treatment system to a catch basin located on the Property for discharge purposes as designated on the attached map;
7. Use of an existing on-site storm water sewer for treated effluent discharge;
8. Conducting sampling for the purpose of chemical analysis and geophysical testing of monitoring wells and extraction wells located on the Property;

9. Conducting maintenance of the monitoring wells located on the Property;
10. Restoring those areas disturbed during EPA's construction on the Property as best as is practicable due to the additional investigation on the Property to be conducted by the New Jersey Department of Environmental Protection;
11. Owner shall notify EPA and receive approval from EPA (in consultation with the New Jersey Department of Environmental Protection) before the Owner conducts any operation that could adversely affect the integrity or protectiveness of any containment system, extraction system, treatment system, monitoring system, or other remedial measures implemented at the Property by EPA.

We realize that these actions by EPA are undertaken pursuant to its response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §9601 et seq.

This written permission is given voluntarily with knowledge of a right to refuse and without threats or promises of any kind.

Aug 8, 2013
Date



Signature, Authorizing Official
Princeton Gamma-Tech, Inc.

KALEVI ONNELA

Name (Print) Authorizing Official
Princeton Gamma-Tech, Inc.

CHIEF EXECUTIVE OFFICER

Title of Authorizing Official